cannot. A mistake is a mistake whatever may be the reason for it. As to whether or not Mr. Foo's mistake amounts to negligence we express no opinion."

The two cases referred to above were concerned mainly with the question of granting special leave to appeal out of time from decisions of the High Court to the Federal Court. However, the principles enunciated in those cases are equally relevant to an application to the High Court for an extension of time to file a notice of appeal or the memorandum of appeal in an appeal from a Subordinate Court. The mistake or oversight by counsel for the appellant in the present case before me did not constitute a valid or sufficient ground on which I could exercise my discretion in favour of the appellant.

The appellant's solicitors might have had a good excuse for not serving the appeal record on the respondents in time because they themselves were not served with a sufficient number of copies of the record by the Sessions Court in time, but they certainly had no excuse for not filing and serving the memorandum of appeal in the High Court and on the respondents within the prescribed period. Rules of procedure are the machinery by which litigants may enforce or resist substantive rights and obligations under the law and to that end certain procedural acts are required by the rules to be performed within such limits of time as may be prescribed therein. The rules are there to be followed and they may be relaxed in the interest of justice only if sufficient cause is shown. The procedural handmaid cannot, without good reason, come to the rescue of slow-moving litigants and their legal advisers.

In the circumstances, therefore, I dismissed the application as well as the appeal itself with costs.

Application dismissed.

Solicitors: *Atma Singh Gill & Gill; Allen, Gledhill & Ball.*

PUBLIC PROSECUTOR v. WAH SEONG (M) TRADING CO. SDN. BHD.

[A.Cr.J. (Arulanandom J.) October 28, 1974]
[Penang — Criminal Appeal No. 8 of 1974]

Control of Supplies Act, 1961, ss. 15, 21 and 22(2) — Possession of controlled article — Reasonable suspicion of offence of concealing such controlled article — Facts showing that goods were stored for other persons — No grounds for reasonable suspicion.

In this case officers of the Enforcement Division Ministry of Supplies found that 36,815 bags of sugar were stored at the godown of Ghee Bee Rice Mills of which the respondents were the tenants. The respondents were charged for possession of the sugar in such circumstances as to raise a reasonable suspicion that an offence under section 15 of the Control of Supplies Act of concealing controlled articles in order to withhold the articles from the market had been committed by them. The appellants stated that they were storing the sugar on behalf of the Malayan Sugar Manufacturing Company Ltd. The learned president of the Sessions Court acquitted the respondents and the appellant appealed.

Held, dismissing the appeal: on the evidence adduced in court, no court could have convicted the respondents on the evidence of the prosecution and the learned president was therefore correct in acquitting and discharging the respondents.

CRIMINAL APPEAL.

Abdullah bin Ngah (Senior Federal Council) for the appellant.

Peter Mooney (*K. Ahmad* with him) for the respondents.

Arulanandom J.: This is an appeal against the decision of the learned President, Sessions Court, Butterworth, wherein he acquitted the respondent-company on a charge of possession of 36,815 bags of sugar which was a controlled article valued at about $1.4 million in such circumstances as to raise a reasonable suspicion that an offence under section 15 of the Control of Supplies Act of concealing such controlled articles in order to withhold the articles from the market had been committed by them and that they had thereby committed an offence under section 21 and punishable under section 22(2) of the Control of Supplies Act, 1961.

As the learned President has stated in his grounds of judgment, section 21 of the Act would appear to be a very wide section in its application. Any person who has possession or is in control of any controlled article in circumstances giving rise to a reasonable suspicion that an offence under this Act is or intended to be committed will be caught within its ambit. It is therefore necessary when construing the section to interpret it very strictly because as it appears the only thing the prosecution needs to prove is that there are circumstances which give rise to a reasonable suspicion, not based on whims or fancies or imagination.

In this case the prosecution relied mainly on its principal witness, one Aziz bin Hamzah, an Inspector with the Enforcement Division, Ministry of Trade and Industry, Penang, and it was wholly because he stated that there were circumstances which gave rise to a reasonable suspicion that the defendants were prosecuted. In his evidence he stated that he had gone to Ghee Bee Rice Mills where he found 36,815 bags of sugar and he suspected an offence under section 21 was being committed. His reasons for suspicion were that the amount was enormous and the godown was not a sugar godown but a rice mill and that there was nothing to indicate in the signboard outside that the sugar was being stored therein. He gave other circumstances as the fact that the respondent-company was not a producer, manufacturer, wholesaler or distributor of the manufactured sugar. To decide whether there were circumstances to raise a reasonable suspicion, the court has to consider all the circumstances before it can find in favour of the prosecution. If these circumstances named by the witness stood in isolation by themselves then perhaps any reasonable man might tend to suspect that an offence under section 21 of the Act had been committed but when construing a section of this nature, as I said earlier, it should be construed strictly. A reasonable suspicion means suspicion which any reasonable man may tend to have when examining a set of circumstances from a particular standpoint, in this case from the point of view of an enforcement officer concerned about hoarding of controlled articles. But in considering the circumstances it is essential that he should consider all the circumstances and not pick out circumstances to justify his suspicion and ignore circumstances which do not justify his suspicion. A prosecution can only be founded under this section if

on examination of all the facts before the investigator his suspicion could be considered reasonable. From his evidence it would appear the investigator conducted the raid with a preconceived notion that an offence was being committed and it seemed that he had considered only certain circumstances which buttressed his own ideas. But one has to consider all the circumstances. When he entered the godown he saw lorries leaving the godown with sugar and other lorries coming in with sugar. When he asked the storekeeper who the owner of the sugar was he was told it belonged to the Malayan Sugar Manufacturing Company, Ltd., and all the bags were labelled M.S.M. At the same time he took 2 receipts, P7A and P7B, which should have immediately given rise to some idea that there was some relationship between the Malayan Sugar Manufacturing Co., Ltd., and Wah Seong (M) Trading Co., Sdn. Bhd. On the same day he also met one Mr. Lee Eoh Hean, the sales manager from M.S.M., who told him exactly what the storekeeper had told him before that the sugar belonged to M.S.M. and was only being stored in the godown. According to the witness he was shown 2 files, one containing letters to the Ministry mentioning the stock position of sugar in the country, and the other file containing letters from Wah Seong (M) Trading Co., Sdn. Bhd. to Malayan Sugar Manufacturing Co., Ltd. pertaining to rental fees as well as handling fees. On the subsequent day, according to the witness he saw the assistant manager, Mr. Lim Chee Wah, who produced to him eleven letters from Wah Seong to M.S.M., produced as exhibits P8A-K, which showed that M.S.M. sugar was stored in the Ghee Bee Rice Mills Godown, and one document (P8A) actually related to the exact amount of sugar found in the godown. He also produced another document pertaining to insurance which specifically refers to one item of property insured in paragraph 6 which reads:

"Stock of refined sugar whilst within the godown constructed of bricks and zinc and roof which is still built on zinc situate at Permatang Pauh, Butterworth, P.W."

This particular godown which PW1 raided was in Permatang Pauh. The least these documents could have done to an investigator would have been to sound a warning note that he might be barking up the wrong tree and persuade him to conduct further investigations to ascertain if his suspicions were reasonable or justified but, in this case, from the conduct of the investigator it would appear that he was conducting his investigations with blinkers on and had already made up his mind to prosecute even without considering circumstances which would have been apparent to any investigator. In his evidence he admits that he knew the returns of sugar stock was submitted fortnightly by Malayan Sugar Manufacturing Co., Ltd. to the Ministry and when he was shown these returns he states that he did not go through the figures in the returns and it was probable that the sugar in question is included in these returns. He also states that it is correct that Malayan Sugar Manufacturing Co., Ltd. had been storing sugar in the said rice mill since 1972. He further goes on to say that he agrees that M.S.M's own store is insufficient to store the sugar (page 26 line A of the notes of evidence). He further states that he knew that Malayan Sugar Manufacturing Co., Ltd. was instructed to keep reserve stocks but he did not know how much they were told to keep and that he did not take any steps to find out. He also saw two inter-department memos from Malayan Sugar Manufacturing Co., Ltd. produced as exhibits D13A and D13B, which were clear instructions from Malayan Sugar Manufacturing Co., Ltd. to the storekeeper at Wah Seong (M) Trading Co., Sdn. Bhd. to deliver sugar to various dealers and he says he did not study these documents but looked at them before sending them to Kuala Lumpur. He further states that he did not check if Malayan Sugar Manufacturing Co., Ltd. had been paying storage charges to the various places where their sugar was stored. All he was looking for was a written document to show that Malayan Sugar Manufacturing Co., Ltd. were subtenants and because he did not get the document he became suspicious. He also goes on to say at page 30 line B of the notes of evidence that there was no attempt on the part of the defendants to conceal any information or to conceal any documents. When shown certain bills for storage charges sent by Wah Seong (M) Trading Co., Sdn. Bhd. to Malayan Sugar Manufacturing Co., Ltd. (exhibit D15) all he could say was that from these bills it appears that Malayan Sugar Manufacturing Co., Ltd., is paying Wah Seong (M) Trading Co., Ltd. storage charges for the number of bags stored. He also states at page 31 line C that he did not know if there was any evidence on the part of Wah Seong (M) Trading Co., Ltd. to show intention to withhold sugar from the market. He also states in his evidence that immediately after the raid Malayan Sugar Manufacturing Co., Ltd. got in touch with the Ministry and sent them a telex which was put in as D11. In the telex to the Ketua Setiausaha, Kementerian Perdagangan dan Perindustrian, Kuala Lumpur, Malayan Sugar Manufacturing Co., Ltd. had categorically stated that the sugar in the godown belonged to them and were part of the total stocks held for the country's requirements and the reason why part of the stocks were kept in the godown of Ghee Bee Rice Mills was because of the limitation of storage space in their factory premises at Prai where they could store up to 7,500 metric tons only. They also stated that they had been paying storage charges to Wah Seong (M) Trading Co., Ltd. who were the tenants of the godown. They also stated that daily records were kept of their sugar transfers, sales deliveries and balance of stocks. Sales to their buyers from this godown could only be effected by them and that documents of storage charges, insurance policies and daily stocks records are available on request. They categorically stated that on the 6th March, 1974 when the raid was conducted they had 1,840.75 metric tons in Ghee Bee Rice Mills. This telex was dated 8th March, 1974, i.e. two days after the raid.

PW2, Zakaria bin Ismail, who is Penolong Pengarah, Kementerian Perdagangan dan Perindustrian, Kuala Lumpur, and in charge of essential commodities including sugar states in his evidence at page 39 "I have no reason to believe that any of the facts stated in the telex are incorrect." He further stated that Malayan Sugar Manufacturing Co., Ltd. was required by the Ministry to stockpile 15,000 tons as reserve stock and it was clear from the telex which was admitted by this witness that they could only store 7,500 metric tons in their own premises. He also stated that Malayan Sugar Manufacturing Co., Ltd.

supplied fortnightly returns to show stockpile, which was produced as D10, and the amount seized in Ghee Bee Rice Mills was not in excess of what was shown in the returns. He further stated that refineries were instructed to send returns to show to whom they sell sugar and the quantity. He further stated at page 37 line C3 that with regard to directive to stockpiling sugar, the Ministry did not specify where the sugar was to be stored. He further stated at page 38 "I can't possibly say that there could be possibility of concealment by refineries regarding the stock piling.... We never check the actual stock with the refineries. We could check. Unless the refineries adopt some method I could not foresee possibility of concealment on their part." He further stated that the returns submitted by Malayan Sugar Manufacturing Co., Ltd. to them were satisfactory regarding the information produced.

Again it should be noted that there is no law prohibiting the storage of sugar in an empty godown in a rice mill. Sugar and rice are both foodstuffs and essential commodities and nothing could be more natural than an owner of sugar hiring a godown in a rice mill for storing his sugar when he has insufficient space in his own factory or a rice miller offering storage space in his empty godown to a sugar owner. Again there is no law that every godown should state on its signboard what is stored in the godown. If that were the law many owners of godowns would find themselves in court. Again Permatang Pauh is not an isolated tin mine or rubber estate. It is an industrial area with factories and godown and it would not be easy to conceal movement of goods in and out of the godown from the numerous workers there.

In the light of all these facts, which were known to the investigator or which he could have found out if he had conducted his investigations thoroughly, it is difficult to understand how any reasonable person could suspect that this sugar was stored in contravention of section 21 of the Control of Supplies Act, or that any reasonable man could on consideration of all the facts and circumstances, I repeat all the facts and circumstances, could have had grounds for reasonable suspicion that an offence under section 21 of the Act was committed.

It is necessary for this court to always stress that investigations should be carried out thoroughly and honestly and investigators should not choose to discard bits of evidence which do not suit their own purposes. While on the face of it something may look suspicious it need not be that suspicion should remain in one's mind when other factors are disclosed. While one may suspect that a man entering one's compound is a thief when one finds out that he is only a messenger delivering something to one's house, one does not because of the original suspicion go on to arrest him. In this case it is not clear whether PW1 the investigator was incapable of comprehending the facts or was not willing to see circumstances which were quite apparent for reasons best known to himself but whatever the reason on consideration of all the facts no charge under section 21 could be maintained. Just as in these courts, prosecutors must not appear to be persecutors. Enforcement officers and investigators should also remember their responsibilities to the public and only prefer charges which are justifiable and not intended to harrass the public.

The learned Deputy now appeals against the findings of the President. The learned President had a duty to consider all the evidence before him whether given in evidence-in-chief or in cross-examination. There was a criminal trial and the burden never shifts from the prosecution to prove its case beyond reasonable doubt. All the evidence given in the case was by prosecution witnesses and the learned President was correct both in law and in fact in coming to the conclusion that he did.

The learned President had considered all the material evidence very carefully and the law relevant to the charge. At the close of the prosecution case if he was satisfied that the evidence if unrebutted would warrant a conviction he should have called the defence. In this case on the evidence adduced in court, no court could have convicted the defendants on the evidence of the prosecution. In fact I would venture to say that there was no ground on which the charge could have been justified. The learned President was therefore correct in acquitting and discharging the defendants.

The appeal therefore is dismissed.

Appeal dismissed.

Solicitors: *K. Ahmad & Yong.*